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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-1015**

12 **MARY WAMBUI GITIHA**  
13 285 London Street Apt. No. 2  
14 San Francisco, CA 94112

**A C C U S A T I O N**

15 **Registered Nurse License No. 661563**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about July 25, 2005, the Board of Registered Nursing issued Registered Nurse  
23 License Number 661563 to Mary Wambui Gituha (Respondent). The Registered Nurse License  
24 was in full force and effect at all times relevant to the charges brought in this Accusation and will  
25 expire on January 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing (Board),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code (Code) unless otherwise indicated.

2 4. Section 2750 of the Code provides that the Board may discipline any licensee,  
3 including a licensee holding a temporary or an inactive license, for any reason provided in Article  
4 3 (commencing with section 2750) of the Nursing Practice Act.

5 5. Section 2764 of the Code provides that the expiration of a license shall not deprive  
6 the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to  
7 render a decision imposing discipline on the license. Under Code section 2811, subdivision (b),  
8 the Board may renew an expired license at any time within eight years after the expiration.

9 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
10 surrender, or cancellation of a license shall not deprive a board of jurisdiction to proceed with a  
11 disciplinary action during the period within which the license may be renewed, restored, reissued  
12 or reinstated.

### 13 STATUTORY PROVISIONS

14 7. Section 2761, subdivision (f), of the Code provides that the Board may take  
15 disciplinary action against a certified or licensed nurse for conviction of a felony or of any  
16 offense substantially related to the qualifications, functions, and duties of a registered nurse, in  
17 which event the record of the conviction shall be conclusive evidence.

18 8. Section 490 of the Code provides that a board may suspend or revoke a license on the  
19 ground that the licensee has been convicted of a crime substantially related to the qualifications,  
20 functions, or duties of the business or profession for which the license was issued.

21 9. California Code of Regulations, title 16, section 1444, states, in pertinent part:

22 "A conviction or act shall be considered to be substantially related to the qualifications,  
23 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
24 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
25 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

26 . . .

27 "(c) Theft, dishonesty, fraud, or deceit."

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1 COST RECOVERY

2 10. Section 125.3 of the Code provides that the Board may request the administrative law  
3 judge to direct a licentiate found to have committed a violation or violations of the licensing act to  
4 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

5 FACTS

6 11. On or about February 6, 2009, in the criminal case *United States of America v. Mary*  
7 *Gitiha*, in the United States District Court for the Western District of Missouri, Western Division,  
8 Case No. 08-00254-01-CR-W-ODS, Respondent pled guilty to violating Title 18, United States  
9 Code, Section 1546 (a) (Immigration Application False Statements). On or about May 14, 2009,  
10 the Court entered judgment for the offense and placed Respondent on probation for a term of 5  
11 years.

12 12. The circumstances of the offense are that on or around May 24, 2005, in an  
13 attachment to her Form I-751 (Petition to Remove Conditions on Residence) that she submitted to  
14 the United States Department of Homeland Security, Respondent falsely claimed that she had  
15 resided and continued to reside exclusively in Kansas City, Missouri from December of 2002. In  
16 fact, Respondent lived in California during that entire period. On or about September 30, 2005,  
17 Respondent's petition was approved and she was granted lawful permanent residency in the  
18 United States.

19 13. The background of the offense is that Respondent lied about her address in order to  
20 make her marriage appear legitimate to immigration officials. Respondent is a Kenyan national  
21 who entered the United States on a student visa in 2001, married Patrick Howard, a United States  
22 citizen, on February 11, 2003, and based on the marriage, applied for permanent residency on  
23 February 13, 2003. Because Howard lived in Missouri, and Respondent lived in California,  
24 Respondent made numerous false statements and provided false documents (including falsified  
25 tax returns) to immigration officials to make it appear that she lived with Howard in Missouri.

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1 CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime)

3 14. Respondent has subjected her registered nurse license to discipline under Code  
4 sections 2761, subdivision (f), and 490, subdivision (a), because, as set forth in paragraphs 11  
5 through 13 above, she was convicted of a crime substantially related to the qualifications,  
6 functions, or duties of a registered nurse, as defined in California Code of Regulations, title 16,  
7 section 1444.

8 PRAYER

9 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
10 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 661563, issued to Mary  
12 Wambui Gititha;

13 2. Ordering Mary Wambui Gititha to pay the Board of Registered Nursing the reasonable  
14 costs of the investigation and enforcement of this case, under Business and Professions Code  
15 section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: June 29, 2011

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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